

## EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-1138-LII-E

TCEQ ID: RN104706726

CASE NO.: 36205

RESPONDENT NAME: BRYAN D. CARLSON

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION OCCURRED:</b> 4955 Jaymar Drive, Sugarland, Harris County</p> <p><b>TYPE OF OPERATION:</b> Licensed landscape irrigator</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received alleging that the Respondent allowed an unlicensed person to use his irrigator license. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> The complainant has not expressed a desire to protest this action or speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired June 22, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p>TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>TCEQ Enforcement Coordinator: Mr. Samuel Short, Water Enforcement Section, MC 219, (512) 239-5363</p> <p>TCEQ Regional Contact: Ms. Sandi Mota, Landscape Irrigation Program, MC 178, (512) 239-1452</p> <p>Respondent: Mr. Bryan D. Carlson, 4955 Jaymar Drive, Sugar land, Texas 77479</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> May 13, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> June 2, 2008</p> <p><b>Date of NOE Relating to this Case:</b> June 25, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed on February 3, 2009. The agreed order was signed on March 23, 2009.</p> <p><b>Current Compliance Status:</b> The Respondent has not yet submitted compliance certification. The Respondent's irrigator license expires July 31, 2009.</p> <p><b>LII:</b> Failed to refrain from authorizing or allowing anyone else to use his license to act as a licensed irrigator [30 TEX. ADMIN. CODE § 344.58(c)<sup>1</sup>].</p>	<p><b>Total Assessed:</b> \$250</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$250</p> <p>The Respondent paid the \$250 administrative penalty in full.</p> <p><b>Site Compliance History Classification</b> N/A</p> <p><b>Person Compliance History Classification</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"><li>1. Immediately, refrain from authorizing or allowing another person or entity to use the Respondent's irrigator license to act as a licensed irrigator.</li><li>2. Within 15 days, submit written certification demonstrating compliance.</li></ol>

<sup>1</sup> 30 TEX. ADMIN. CODE § 344.58(c) is now found at 30 TEX. ADMIN. CODE § 344.34(d) adopted to be effective January 1, 2009, 33 Tex. Reg. 5713.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	Assigned	1-Jul-2008	Screening	13-Jul-2008	EPA Due	
	PCW	3-Nov-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Bryan D. Carlson		
Reg. Ent. Ref. No.	RN104706726		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36205	No. of Violations	1
Docket No.	2008-1138-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 **\$250**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 0.0% Enhancement Subtotals 2, 3, & 7 **\$0**

Notes No change due to no previous compliance history.

**Culpability** No 0.0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** Subtotal 5 **\$0**

**Economic Benefit** 0.0% Enhancement\* Subtotal 6 **\$0**

Total EB Amounts \$0  
Approx. Cost of Compliance \$0  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$250**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$250**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$250**

**DEFERRAL** 0.0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **\$250**

Screening Date 13-Jul-2008

Docket No. 2008-1138-LII-E

PCW

Respondent Bryan D. Carlson

Policy Revision 2 (September 2002)

Case ID No. 36205

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN104706726

Media [Statute] Irrigators

Enf. Coordinator Samuel Short

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
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NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No change due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 13-Jul-2008		<b>Docket No.</b> 2008-1138-LII-E		<b>PCW</b>																		
<b>Respondent</b> Bryan D. Carlson		<i>Policy Revision 2 (September 2002)</i>																				
<b>Case ID No.</b> 36205		<i>PCW Revision June 12, 2008</i>																				
<b>Reg. Ent. Reference No.</b> RN104706726																						
<b>Media [Statute]</b> Irrigators																						
<b>Enf. Coordinator</b> Samuel Short																						
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px;">1</div>																				
<b>Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 344.58(c)</div>																				
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 5px;">Failed to refrain from authorizing or allowing anyone else to use his license to act as a licensed irrigator. Specifically, the Respondent was allowing his Landscape Irrigator License No. 13828 to be used by Paul McGregor dba Sugar Land Professional Landscaping, in an advertisement.</div>																				
<b>Base Penalty</b>					<div style="border: 1px solid black; padding: 2px;">\$2,500</div>																	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																						
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Release</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td></td> <td></td> </tr> </table>					Major	Moderate	Minor	Release				Actual				Potential				Percent <div style="border: 1px solid black; padding: 2px;">0%</div>	
		Major	Moderate	Minor																		
	Release																					
Actual																						
Potential																						
<b>&gt;&gt; Programmatic Matrix</b>																						
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table>					Major	Moderate	Minor	Falsification					x			Percent <div style="border: 1px solid black; padding: 2px;">10%</div>					
		Major	Moderate	Minor																		
	Falsification																					
	x																					
<div style="border: 1px solid black; padding: 5px;">100% of the rule requirement was not met.</div>																						
<b>Adjustment</b>					<div style="border: 1px solid black; padding: 2px;">\$2,250</div>																	
					<div style="border: 1px solid black; padding: 2px;">\$250</div>																	
<b>Violation Events</b>																						
Number of Violation Events		<div style="border: 1px solid black; padding: 2px;">1</div>	Number of violation days		<div style="border: 1px solid black; padding: 2px;">41</div>																	
mark only one with an x	daily	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px;">\$250</div>																			
	monthly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																				
	quarterly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																				
	semiannual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																				
	annual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																				
	single event	<div style="border: 1px solid black; width: 40px; height: 15px; text-align: center;">x</div>																				
<div style="border: 1px solid black; padding: 5px; text-align: center;">One single event is recommended.</div>																						
<b>Good Faith Efforts to Comply</b>		0.0% Reduction		<div style="border: 1px solid black; padding: 2px;">\$0</div>																		
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>			Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with x)	Violation Subtotal <div style="border: 1px solid black; padding: 2px;">\$250</div>						
	Before NOV	NOV to EDPRP/Settlement Offer																				
Extraordinary																						
Ordinary																						
N/A	x	(mark with x)																				
Notes		<div style="border: 1px solid black; padding: 5px;">The Respondent does not meet the good faith criteria for this violation.</div>																				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>																				
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px;">\$0</div>	Violation Final Penalty Total		<div style="border: 1px solid black; padding: 2px;">\$250</div>																	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<div style="border: 1px solid black; padding: 2px;">\$250</div>																	

**Economic Benefit Worksheet**

Respondent: Bryan D. Carlson

Case ID No. 36205

Reg. Ent. Reference No. RN104706726

Media Irrigators

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The Respondent gained no economic benefit by authorizing or allowing the use of his license by someone else.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

## Compliance History

Customer/Respondent/Owner-Operator:	CN602880767	CARLSON, BRYAN D	Classification:	Rating:
Regulated Entity:	RN104706726	CARLSON, BRYAN D	Classification:	Site Rating:
ID Number(s):	BACKFLOW PREVENTION ASSEMBLY TESTER LICENSING		LICENSE	BP0011264
	LANDSCAPE IRRIGATION LICENSING		LICENSE	LI0013828
Location:	4955 JAYMAR DR, SUGAR LAND, TX, 77479			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	July 09, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 09, 2003 to July 09, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Samuel Short	Phone:	(512) 239-5363	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- |                        |   |     |
|------------------------|---|-----|
| A.                     | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | N/A |
| B.                     | Any criminal convictions of the state of Texas and the federal government.  | N/A |
| C.                     | Chronic excessive emissions events.   | N/A |
| D.                     | The approval dates of investigations. (CCEDS Inv. Track. No.)   | N/A |
| E.                     | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  |     |
| F.                     | Environmental audits.   | N/A |
| G.                     | Type of environmental management systems (EMSs).  | N/A |
| H.                     | Voluntary on-site compliance assessment dates.  | N/A |
| I.                     | Participation in a voluntary pollution reduction program.   | N/A |
| J.                     | Early compliance.   | N/A |
| Sites Outside of Texas |   |     |
|                        |   | N/A |

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BRYAN D. CARLSON;  
RN104706726**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-1138-LII-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Bryan D. Carlson under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Bryan D. Carlson, appear before the Commission and together stipulate that:

1. Bryan D. Carlson is a licensed landscape irrigator located at 4955 Jaymar Drive, Sugar Land, Harris County, Texas.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. OCCUPATIONS CODE ch. 1903, TEX. WATER CODE ch. 37 and TCEQ rules.
3. The Commission and Bryan D. Carlson agree that the Commission has jurisdiction to enter this Agreed Order, and that Bryan D. Carlson is subject to the Commission's jurisdiction.
4. Bryan D. Carlson received notice of the violations alleged in Section II ("Allegations") on or about June 30, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Bryan D. Carlson of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Bryan D. Carlson paid two hundred fifty dollars (\$250.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Bryan D. Carlson agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Bryan D. Carlson has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

During a record review conducted on June 2, 2008, a TCEQ Central Office investigator documented that Bryan D. Carlson violated 30 TEX. ADMIN. CODE § 344.58(c)<sup>1</sup> by failing to refrain from authorizing or allowing anyone else to use his license to act as a licensed irrigator. Specifically, Bryan D. Carlson was allowing his Landscape Irrigator License No. 13828 to be used by Paul McGregor dba Sugar Land Professional Landscaping in an advertisement.

## III. DENIALS

Bryan D. Carlson generally denies each allegation in Section II ("Allegations").

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<sup>1</sup> 30 TEX. ADMIN. CODE § 344.58(c) is now found at 30 TEX. ADMIN. CODE § 344.34(d) adopted to be effective January 1, 2009, 33 Tex. Reg. 5713.

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Bryan D. Carlson pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Bryan D. Carlson's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Bryan D. Carlson, Docket No. 2008-1138-LII-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Bryan D. Carlson shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Bryan D. Carlson shall refrain from authorizing or allowing another person or entity to use Landscape Irrigator License No. 13828 to act as a licensed irrigator, in accordance with the requirements of 30 TEX. ADMIN. CODE § 344.34(d); and
  - b. Within 15 days after the effective date of this Agreed Order, Bryan D. Carlson shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Bryan D. Carlson shall submit the written certification to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Regulatory Compliance Section Manager  
Compliance Support Division, MC-178  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Bryan D. Carlson.
4. If Bryan D. Carlson fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Bryan D. Carlson's failure to comply is not a violation of this Agreed Order. Bryan D. Carlson shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Bryan D. Carlson shall notify the Executive Director within seven days after Bryan D. Carlson becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Bryan D. Carlson shall be made in writing to the Executive Director. Extensions are not effective until Bryan D. Carlson receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Bryan D. Carlson in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Bryan D. Carlson, or three days after the date on which the Commission mails notice of the Order to Bryan D. Carlson, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Brynn Pennington

For the Executive Director

6/12/2009

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Bryan D. Carlson's compliance history;
- Greater scrutiny of any permit applications submitted by Bryan D. Carlson;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Bryan D. Carlson;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Bryan D. Carlson; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Brynn Pennington  
Signature

3/25/09  
Date

Bryan Carlson  
Name (Printed or typed)  
Authorized representative of  
Bryan D. Carlson

Owner  
Title